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09/923,621	08/07/2001	Karlheinz Hausmann	AD6745 US NA	2090

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/23/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,621

Applicant(s)

HAUSMANN ET AL.

Examiner

Walter B Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, drawn to a package, classified in class 428, subclass 35.2.
 - II. Claims 9-12, drawn to a method for removing amines from the headspace of a modified atmosphere package, classified in class 156, subclass 60.
2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make a materially different product such as a package without a modified atmosphere headspace.
3. During a telephone conversation with Kevin Dobson on September 23, 2002 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-12 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Oath/Declaration

7. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: it does not contain reference to a claim for domestic priority under 35 USC § 119(e) to a provisional application.

It does not identify the mailing or post office address of each inventor. A mailing or post office address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing or post office address should include the ZIP Code designation. The mailing or post office address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. ~~Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter~~
which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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There is a discrepancy between the extent of neutralization of the carboxylic acid groups being claimed and that which is disclosed in the specification. The specification reads "[the] copolymer optionally having up to 90% of the carboxylic acid groups optionally by metal ions" (page 4, lines 26-29) whereas the extent of neutralization of the carboxylic acid groups is claimed as 99%.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 2-5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 2, there is a discrepancy between the extent of neutralization of the carboxylic acid groups being claimed and that which is disclosed in the specification. The specification reads "[the] copolymer optionally having up to 90% of the carboxylic acid groups optionally by metal ions" (page 4, lines 26-29) whereas the extent of neutralization of the carboxylic acid groups is claimed as 99%. This discrepancy must be rectified in order for claim 2 to be in definite form.

In regard to claim 3, the word "topmost" is indefinite. While the language following the word "topmost" elucidates the intended meaning of the word "topmost", "topmost" is a relative term and no information is given (besides the language following "topmost") that would definitively identify a certain layer in the multilayer film as the "topmost" layer. The word "topmost" serves only to confuse. Examiner suggests deleting "topmost".

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Claim 3 recites the limitation "packaged item" in the third line. There is insufficient antecedent basis for this limitation in the claim.

In further regard to claim 3, the word "absorbent" is written, while the word "adsorbent" is written in claims 1 and 4. Applicants must choose which word better describes the desired effect of the claimed composition to prevent confusion in interpreting the claims.

In regard to claims 4 and 5, the phrase "whereby the capacity of the adsorbent polymer to adsorb the amine is reduced, and whereby the capacity of the adsorbent polymers to absorb amines is reduced to a level at or below that level of amines generated by fish that is unfit for consumption" is indefinite. It is unclear what is meant by "the capacity of the adsorbent polymer to adsorb the amine is reduced". "Reduced" is confusing as used in claims 4 and 5. Does the mixture of the polymer and active ingredients adsorb more or less amine than the polymer without the active ingredients? The word "capacity" is indefinite. Furthermore, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. The entire "whereby..." phrase needs to be reworked so that the purpose of the active ingredients is clear and definite. Examiner suggests amending to "whereby the polymer adsorbs an amount of amine such that the unadsorbed amine exists in the package in an amount that is greater than the amount of unadsorbed amine that would exist without the active ingredient added to the polymer, but less than an amount that is unfit for consumption", if this suggested phrase is indeed consistent with the intended meaning of the phrase. This suggestion has been formulated based on the discussion in the specification about the need for an odor absorbing package that would nonetheless indicate dangerous

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deterioration of the package food (page 6, lines 25-33). Furthermore, "level of amines generated by fish that is unfit for consumption" in terms of a quantitative figure is not specified thus rendering the claim indefinite in this regard. Also, do Applicants intend the invention to be used solely for fish packaging as is suggested in claims 4 and 5?

In regard to claim 8, the claim should positively set forth the purpose of the modified atmosphere headspace and the structure necessary for carrying out the purpose, i.e., the claim is incomplete in regard to the structure of the modified atmosphere headspace. No structure is claimed for the modified atmosphere headspace; therefore, the scope of the claim cannot be ascertained.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hekal.

Hekal teaches a multilayer structure consisting of a film of an odor absorbing material that is placed between two absorbent layers (page 7, lines 21-23). The odor absorbing material absorbs odor causing amine compounds, and consequently removes odor (page 7, lines 26-8). The odor absorbing material is a polymeric matrix of polyethylene acrylic acid with zeolite bound in the polymeric matrix (page 12, lines 3-5 and lines 24-26). Examiner interprets polyethylene acrylic acid as a copolymer of ethylene and acrylic acid, which is an α,β ethylenically unsaturated carboxylic acid having three carbon atoms. Hekal teaches fish

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wrapping (page 8, lines 14-16) or fish bags (page 8, lines 20-22) as suitable structures for the odor absorbing material-containing multilayer film.

In further regard to claim 1, the phrase "useful for packaging fish or other perishable food items" is an intended use phrase that has not been given patentable weight, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claims 2, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hekal in view of Yoshikawa et al.

Hekal teaches the package comprising a multilayer polymer film as discussed above.

In regard to claim 2, Hekal fails to teach that the copolymer of ethylene and α,β -ethylenically unsaturated carboxylic acid has up to 99% of the carboxylic acid groups neutralized by metal ions. Yoshikawa et al., however, disclose a multilayer film packaging having an outermost or innermost layer made of an ionic copolymer which is produced by completely or partially neutralizing a copolymer of an α -olefin such as ethylene with an unsaturated organic acid such as acrylic acid or methacrylic acid into a salt with the cation of an alkali metal, zinc or the like (col. 4, lines 30-37). The ionic copolymer serves to confer upon the film heat sealing ability and seal strength in the presence of an oil, among others (col. 4, lines 37-42). Therefore, one of ordinary skill in the art would have recognized to have completely or partially neutralized the carboxylic acid groups in the polyethylene acrylic acid copolymer of Hekal with metal ions such as cations of alkali metals or zinc in order to confer heat sealing ability and seal strength in the presence of an oil to the odor absorbing layer as taught by Yoshikawa et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have completely or partially neutralized the carboxylic acid groups in the polyethylene acrylic acid copolymer of Hekal with metal ions such as cations of alkali metals or zinc in order to confer heat sealing ability and seal strength in the presence of an oil to the odor absorbing layer as taught by Yoshikawa et al.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have controlled the extent of neutralization of the carboxylic acid groups in the polyethylene acrylic acid copolymer of Hekal by routine experimentation via variation in the amount of metal cation used in order to determine the optimal extent of neutralization of the carboxylic acid groups in regard to heat sealing ability and seal strength of the odor absorbing

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film layer depending on the desired end-use result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to claim 4, Hekal and Yoshikawa et al. teach the package comprising a multilayer polymer film having an odor absorbing polymeric matrix of polyethylene acrylic acid copolymer with zeolite bound in the polymeric matrix as discussed above. Hekal teaches that zeolites are effective in absorbing amines (page 3, lines 15-16 and page 3, line – page 4, line 10). Hekal and Yoshikawa et al. fail to teach that the capacity of the adsorbent polymers to adsorb amines is reduced to a level at or below the level of amines generated by fish that is unfit for consumption. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the zeolite concentration in the ethylene acrylic acid copolymer of Hekal and Yoshikawa et al. via routine experimentation in order to achieve a desired level of amine adsorption such as to a level at or below the level of amines generated by fish that is unfit for consumption depending on the desired end-use result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to claim 6, Hekal fails to teach that the copolymer comprises from about 1 to about 50% of acid comonomer by weight based on the weight of the copolymer. Yoshikawa et al., however, teach that the ethylene-acrylic ester copolymers have ethylene contents of not less than 96%, consequently, the acrylic acid content is no more than 4%. Therefore, one of ordinary skill in the art would have recognized to use a polyethylene acrylic acid copolymer with an acid

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comonomer content of less than 4% by weight as the copolymer of Hekal, since Yoshikawa et al. teach that an acid comonomer content of less than 4% by weight is a suitable acid comonomer content in order to confer heat sealing ability and seal strength in the presence of an oil to the odor absorbing layer as taught by Yoshikawa et al.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the acid comonomer concentration in the ethylene acrylic acid copolymer taught by Hekal and Yoshikawa et al. via routine experimentation in order to determine the acid comonomer concentration at which optimal amine scavenging results are obtained depending on the desired end-use result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

16. Claim 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hekal in view of Kennedy et al.

In regard to claim 3, Hekal teaches the package comprising a multilayer polymer film as discussed above. Hekal fails to teach that the multilayer polymer film has a sealant layer, where the sealant layer is in direct contact with the packaged item and the absorbent layer is the sealant layer. Kennedy et al., however disclose a multilayer film comprising a first outer sealant and food-contact layer which comprises ionomer, ethylene/acid copolymer and/or carboxyl-modified polyethylene (page 35, lines 6-7). Kennedy et al. discloses that the term "ionomer" includes ethylene/acrylic acid copolymer (page 6, line 9). Since the Kennedy et al. further disclose that sealant layers generally are the inside film layer of a package, and that sealant layers frequently serve as a food contact layer in the packaging of foods (page 6, lines 19-22). Therefore, one of

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ordinary skill in the art would have recognized to use the odor absorbing polyethylene acrylic acid copolymer with zeolite bound in the polymeric matrix of Hekal as a sealant layer which contacts the packaged item since it is notoriously well known to use an ethylene/acid copolymer as a sealant layer which contacts the packaged item as taught by Kennedy et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the odor absorbing polyethylene acrylic acid copolymer with zeolite bound in the polymeric matrix of Hekal as a sealant layer which contacts the packaged item since it is notoriously well known to use an ethylene/acid copolymer as a sealant layer which contacts the packaged item as taught by Kennedy et al.

In regard to claim 5, Hekal and Kennedy et al. teach the package comprising a multilayer polymer film having an odor absorbing polymeric matrix of polyethylene acrylic acid copolymer with zeolite bound in the polymeric matrix as discussed above. Hekal teaches that zeolites are effective in absorbing amines (page 3, lines 15-16 and page 3, line – page 4, line 10). Hekal and Kennedy et al. fail to teach that the capacity of the adsorbent polymers to adsorb amines is reduced to a level at or below the level of amines generated by fish that is unfit for consumption. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the zeolite concentration in the ethylene acrylic acid copolymer of Hekal via routine experimentation in order to achieve a desired level of amine adsorption such as to a level at or below the level of amines generated by fish that is unfit for consumption depending on the desired end-use result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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17. Claim 3, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hekal in view of Yoshikawa et al., and in further view of Kennedy et al.

In regard to claim 3, Hekal and Yoshikawa et al. teach the package comprising a multilayer polymer film as discussed above. Hekal and Yoshikawa et al. fail to teach that the multilayer polymer film has a sealant layer, where the sealant layer is in direct contact with the packaged item and the absorbent layer is the sealant layer. Kennedy et al., however disclose a multilayer film comprising a first outer sealant and food-contact layer which comprises ionomer, ethylene/acid copolymer and/or carboxyl-modified polyethylene (page 35, lines 6-7). Kennedy et al. discloses that the term "ionomer" includes ethylene/acrylic acid copolymer (page 6, line 9). Since the Kennedy et al. further disclose that sealant layers generally are the inside film layer of a package, and that sealant layers frequently serve as a food contact layer in the packaging of foods (page 6, lines 19-22). Therefore, one of ordinary skill in the art would have recognized to use the odor absorbing polyethylene acrylic acid copolymer with zeolite bound in the polymeric matrix of Hekal and Yoshikawa et al. as a sealant layer which contacts the packaged item since it is notoriously well known to use an ethylene/acid copolymer as a sealant layer which contacts the packaged item as taught by Kennedy et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the odor absorbing polyethylene acrylic acid copolymer with zeolite bound in the polymeric matrix of Hekal and Yoshikawa et al. as a sealant layer which contacts the packaged item since it is notoriously well known to use an ethylene/acid copolymer as a sealant layer which contacts the packaged item as taught by Kennedy et al.

In regard to claim 5, Hekal, Yoshikawa et al. and Kennedy et al. teach the package comprising a multilayer polymer film having an odor absorbing polymeric matrix of polyethylene acrylic acid copolymer with zeolite bound in the polymeric matrix as discussed above. Hekal teaches that zeolites are effective in absorbing amines (page 3, lines 15-16 and page 3, line – page 4, line 10). Hekal, Yoshikawa et al. and Kennedy et al. fail to teach that the capacity of the adsorbent polymers to adsorb amines is reduced to a level at or below the level of amines generated by fish that is unfit for consumption. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the zeolite concentration in the ethylene acrylic acid copolymer of Hekal via routine experimentation in order to achieve a desired level of amine adsorption such as to a level at or below the level of amines generated by fish that is unfit for consumption depending on the desired end-use result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to claim 7, Hekal, Yoshikawa et al. and Kennedy et al. teach the package comprising a multilayer polymer film as discussed above. Hekal and Kennedy et al. fail to teach that the copolymer comprises from about 2 to about 19% of acid comonomer by weight based on the weight of the copolymer. Yoshikawa et al., however, teach that the ethylene-acrylic ester copolymers have ethylene contents of not less than 96%, consequently, the acrylic acid content is no more than 4%. Therefore, one of ordinary skill in the art would have recognized to use a polyethylene acrylic acid copolymer with an acid comonomer content of less than 4% by weight as the copolymer of Hekal, since Yoshikawa et al. teach that an acid comonomer content of less

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than 4% by weight is a suitable acid comonomer content in order to confer heat sealing ability and seal strength in the presence of an oil to the odor absorbing layer as taught by Yoshikawa et al.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the acid comonomer concentration in the ethylene acrylic acid copolymer taught by Hekal and Yoshikawa et al. via routine experimentation in order to determine the acid comonomer concentration at which optimal amine scavenging results are obtained depending on the desired end-use result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

18. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hekal.

Hekal teaches the package comprising a multilayer polymer film having an odor absorbing polymeric matrix of polyethylene acrylic acid copolymer with zeolite bound in the polymeric matrix as discussed above. Hekal teaches that zeolites are effective in absorbing amines (page 3, lines 15-16 and page 3, line – page 4, line 10). Hekal fails to teach that the capacity of the adsorbent polymers to adsorb amines is reduced to a level at or below the level of amines generated by fish that is unfit for consumption. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the zeolite concentration in the ethylene acrylic acid copolymer of Hekal via routine experimentation in order to achieve a desired level of amine-adsorption such as to a level at or below the level of amines generated by fish that is unfit for consumption depending on the desired end-use result, since it has been held that discovering an optimum value of a result effective variable involves

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only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

19. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hekal in view of Andersson et al.

Hekal teaches the package comprising a multilayer polymer film as discussed above. Hekal fails to teach that the package has a modified atmosphere headspace. Andersson et al., however, teaches a food package with tray 10 having prepunched holes 14 through which a modified atmosphere is introduced into the headspace of the package (col. 3, lines 22-27 and lines 46-64 and Figures 1 and 2). A modified atmosphere in the form of an aroma is introduced into the headspace of the package so that the consumer's appetite will be whetted upon opening the package (col. 1, lines 7-16). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a modified atmosphere headspace in the package of Hekal, in order to introduce an aroma to the headspace of the package so that the consumer's appetite will be whetted upon opening the package as taught by Andersson et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a modified atmosphere headspace in the package of Hekal, in order to introduce an aroma to the headspace of the package so that the consumer's appetite will be whetted upon opening the package as taught by Andersson et al.

Conclusion

20. Any inquiry concerning ~~this communication or earlier communications~~ from the examiner should be directed to Walter B Aughenbaugh whose telephone number is 703-305-4511. The examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

wba wBA
10/21/02


HAROLD PYON
SUPERVISORY PATENT EXAMINER

~~RECEIVED IN THE CLASSIFICATION~~
~~DATE 10/21/02~~

10/21/02